September. As the action was to recover excess rent paid by the appellant the words "all payments due to the defendant" must relate to the rent of premises.

After the date of the order of the 23rd September the parties did not seem to have arrived at any definite agreement about the rent. The appellant refused the figure suggested by the respondent which was $60. He said he would abide by the order of the Rent Board. Such an order could be made pursuant to an application under section 10 of the Ordinance. But no such application was ever made.

On the 8th of December the appellant, by his letter Ex.A.5 and also by his letter of the 28th December Ex.A.6, stated that the rent was $45. By a letter of the 10th February 1966 Ex.A.10 through his solicitor the respondent accepted this figure but stated:—

"We accept your assurance that your client wants only the standard rent and that he has no intention of increasing the rent. We are advising our client to act on this assurance and you are no doubt aware that our client will have to adjust the rent of his subtenants taking into account the fact that rent of the whole premises is only $45."

On the 11th of February 1966 the appellant in a letter through his solicitor said that there was no assurance that he would not increase his rent in the future. He also stated that a receipt would be sent for the $225. On the 14th of February, however, he returned the cheque to the appellant and by another letter of the same date terminated the tenancy. The appellant made no reference whatever to the point raised in the respondent's letter that he was making a qualified acceptance of the rent of $45 owing to adjustments necessary in the rents he was receiving from his subtenants.

Nothing happened until May 1966 when the appellant filed a suit claiming possession.

I find from the evidence that the parties had not arrived at any agreement as to the amount of rent. The order of the 23rd September left the matter open. There was no order of the Rent Board fixing rent. It was only by his letter of the 8th and confirmed by a letter of the 28th of December that the appellant himself fixed it at $45 which was accepted by the respondent with a reservation regarding the rents he would receive from his subtenants. Nothing was said about this by the appellant and inferentially it must have been rejected as he filed a suit for possession. Owing to the absence of any agreement regarding the amount of rent the respondent cannot be held to have accepted from his subtenants rents exceeding 75% of the rent paid by him. In view of the state of affairs disclosed in this case the parties would be well advised to apply to the Rent Board to fix the rent.

The appeal is dismissed but having regard to the course this case has taken there will be no order as to costs.

Azmi L.P. and **MacIntyre F.J.** concurred.

Appeal dismissed.

TOK JWEE KEE v. TAY AH HOCK & SONS LTD. & TOWN COUNCIL, JOHORE BAHRU

[F.C. (Azmi L.P., Suffian & MacIntyre F.JJ.) January 30, 1969]

[Johore Bahru — Federal Court Civil Appeal No. X.50 of 1968]

Local Authority — Building plans — Allegation that plans approved by Town Council contrary to provisions of Enactment — Whether Town Council liable to owner of adjoining land — Liability of owner of land on which building is built — Town Boards Enactment (Johore No. 118), s. 145 — Building By-laws, 1937, by-law 46.

In this case the appellant claimed a declaration that the approval of building plans by the Johore Town Council was contrary to the Town Boards Enactment and therefore illegal and inoperative. He also claimed damages against the council and also against the owner of the land on which the building was built. It was also alleged that there had been a breach of the building by-laws but the only damage alleged as a result of such breach was damage to the appellant's property from falling cement plasters etc.

Held: (1) the Town Council is liable to the appellant if in breach of the outright prohibition of section 145 of the Town Boards Enactment it passed the neighbour's building plan when it was not in conformity with the approved town plan and such breach results in damage to the plaintiff;

(2) the council is not liable to the plaintiff for breach of the by-laws, it not being alleged that the council has caused damage by negligence or trespass;

(3) the neighbour is liable to the plaintiff for breach of by-law 46 if and only if, the breach results in actual damage to the plaintiff and in any event, irrespective of whether the neighbour was in such breach or not, the neighbour is liable to the plaintiff for any damage caused by negligence and/or trespass.

Cases referred to:—

(1) *J.R. Munday Ltd.* v. *London County Council* [1916] 2 K.B. 331 at p. 334.

(2) *East Suffolk Rivers Catchment Board* v. *Kent & Anor.* [1941] A.C. 74 at p. 85.

(3) *Ipoh Town Council & Anor.* v. *Ng Khoon Khoon* [1960] M.L.J. 227.

(4) *Pasmore & Ors.* v. *The Oswaldtwistle Urban District Council* [1898] A.C. 387.

(5) *Doe* v. *Bridges* (1831), 1 B. & Ad. 847 at p. 859

(6) *Butler & Anor.* v. *Fife Coal Co. Ltd.* [1912] A.C. 149.

(7) *Cutler* v. *Wandsworth Stadium Ltd.* [1949] A.C. 398.

(8) *Solomons* v. *R. Gertzenstein Ld. & Ors.* [1954] 1 Q.B. 565.

(9) *Solomons* v. *R. Gertzenstein Ld. & Ors.* [1954] 2 Q.B. 243.

(10) *Buxton* v. *Minister of Housing and Local Government* [1960] 3 All E.R. 408.

(11) *Gregory* v. *London Borough of Camden* [1966] 2 All E.R. 196.

(12) *District Council Central, Province Wellesley* v. *Yegappan* [1966] 2 M.L.J. 177.

The following cases and authorities were also cited in argument: *Tan Chye Choo & Ors* v. *Chong Kew Moi* [1966] M.L.J. 4; *Clerk & Lindsell* on Torts, 12th Edition: page 738 — Article 1401, General Principle; p. 742 — Article 1406, 1409; p. 745 — Article 1411; *Mallal's* Supreme Court Practice and footnote: page 320 on rule 5; Order 25 — Rules 2, 3 and 4; Order 28 — Rule 1; *Monk* v. *Redwing Aircraft Co. Ltd.* [1942] 1 All E.R. 133; *Hayward & Anor.* v. *Pullinger & Partners, Ltd.* [1950] 1 All E.R. 581; Town Board Enactment (No. 118); Town Board By-laws, 1937; *Hart's* Introduction to Local Government, 6th Edition; *In re An Application by Loke Wan Tho* [1956] M.L.J. 149.

FEDERAL COURT.

Dato' S.P. Seenivasagam for the appellant.

Peter M. Williams for the 1st respondent.

Dato' Donald C. Jackson for the 2nd respondent.

Cur. Adv. Vult.

Suffian F.J.: Mr. Tok Jwee Kee, the plaintiff, owns a piece of land, Lot 6232, in the Johore Bahru town, an area within the jurisdiction of the Johore Bahru Town Council, the second defendant. It is a small piece of land, only 8,365.4 square feet in area. On it stands a bungalow, 56H Jalan Ibrahim Sultan, occupied by the plaintiff and his family.

Tay Ah Hock & Sons Ltd., the first defendant, (hereinafter referred to as the neighbour) owns the land next door, Lot 6233. It too is a small lot, only 11,135 square feet in area. The neighbour wanted to build a block of three 4-storey buildings on its land. It submitted building plans to the Town Council which were approved on 31st January and 8th June, 1965, and the buildings have since been completed. Each of the 4-storey buildings consists of a shophouse on the ground floor and three flats above it, so the block of buildings has three shophouses on the ground floor and nine flats above them.

The plaintiff asks the court for —

(a) a declaration that the approval of the building plans by the Town Council was illegal and inoperative;

(b) in the alternative, a declaration that the approval by the Town Council of the building plans was null and void as being *ultra vires* and was approved contrary to the rules of natural justice;

(c) an order that the block be demolished;

(d) damages;

(e) costs; and

(f) such further or other relief as the court may deem just.

It is to be noted that the plaintiff's complaint against his neighbour is quite distinct from his complaint against the Town Council.

His complaint against the Town Council as given in paragraphs 4 and 6 of his statement of claim is as follows. He says that the two lands concerned are within the residential zone of Johore Bahru town and the approval of the buildings on his neighbour's land was contrary to the provisions of the Town Boards Enactment No. 118 and the Town Board By-laws, 1937. In his statement of claim he particularises these provisions as sections 115A, 136, 137, 138, 143, 96 and 97 of the Enactment and by-laws 35, 30 and 10(i)(g). He says that, in consequence of the Town Council wrongfully approving the plans, his property has been adversely affected and he has suffered damages. Before us his counsel, Dato' Seenivasagam, abandoned reliance on sections 115A, 143, 96 and 97.

The plaintiff's complaint against his neighbour is spelt out in paragraph 5 of his statement of claim. He says:—

> "In or about the month of May, 1965, the [neighbour] commenced building operations on the lot 6233 in accordance with the said building plans without proper safeguard or precautions for the protection of the plaintiff and members of his family and his adjoining property as required by by-law 46 of the Town Board By-laws, 1937 and in consequence of the breach of the by-law and/or the negligence of the [neighbour], his servants or agents, the plaintiff suffered risk of bodily injury to his children and damage to his property, the expanded metal fence, roof, roof-gutters and window panes of his bungalow. In addition cement plasters broken bricks, granite stones and pieces of timber have fallen on to the plaintiff's land in the course of the erection of the three 4-storey buildings by the [neighbour], his servants or agents."

It is to be noted that the plaintiff charges the neighbour with breach of a statutory provision and/or with negligence and nowhere does he expressly use the word trespass.

Both his neighbour and the Town Council deny that the building plans were approved otherwise than in compliance with the provisions of the Town Boards Enactment and the Town Board By-laws. The neighbour also states that, if as alleged, the plaintiff's property has been adversely affected and the plaintiff has suffered damage, the neighbour is not liable.

Further both defendants plead that the plaintiff's statement of claim discloses no cause of action and should be struck out as being frivolous and vexatious.

The merits of the claim have not been fully ventilated. On 30th October, 1967, Ali J. heard arguments on a preliminary objection in law when both defendants argued that, even assuming that the approval of the building plans by

the Town Council was wrong, the plaintiff had no cause of action.

On 29th June, 1968, the learned judge decided that he agreed with this argument.

The plaintiff appeals to this court.

The learned judge decided the matter in this way.

First, he decided that paragraph 5 of the statement of claim, even if the allegations of facts in it were true, disclosed no right of action for damages against the neighbour because the plaintiff only suffered risk of injury and damage *in futuro*. He said:—

"The point taken by [the neighbour] is that, even assuming that there has been an omission on [its part] to provide proper safeguards and precautions as alleged and even assuming that such an omission is in contravention of by-law 46 . . . ., the plaintiff has no actionable claim against [his neighbour] in as much as he has suffered no injury or damage. In this paragraph all that is stated by the plaintiff is that as a result of the first defendant's omission he has suffered risk of bodily injury to his children and damage to his property. Quite clearly there is no express allegation of real injury and damage. I think it is plain common sense that any act or omission, however dangerous or negligent is not an actionable wrong unless it results in injury and damage."

He cited the words of Lord Reading C.J. in *J.R. Munday Ltd.* v. *London County Council* (1) and the words of Lord Simon L.C. in *East Suffolk Rivers Catchment Board* v. *Kent & Anor.* (2) in support of his conclusion.

Secondly, as against the council the learned judge held that, even if its approval of the plans had been wrongful, the plaintiff had no legal right to or interest in the declaration sought. He said:—

". . . . The Town Council is a public authority vested with certain powers for the purposes of regulating and controlling the erection of buildings in the Council Area. Whether these powers are exercised properly or otherwise may perhaps be a matter of interest to certain inhabitants of the area. But the important question is to whom is a Town Council responsible for the manner in which those powers are exercised? The answer, I think, is clear in that the Council is responsible to the State Government or, more correctly described, the Sultan in Council who, in terms of section 3 of the Town Boards Enactment No. 118, is the appointing authority. How a complaint against this authority is to be made is not a matter for this court. As far as I am concerned, this is a personal action brought by the plaintiff in his personal or private capacity and not in the capacity of a member of the public . . . . I am forced to conclude that there is absolutely no ground for making the declaration sought in this action."

The learned judge therefore ordered that the prayers for the declaration against the council and for an order to demolish the buildings be struck out.

Thirdly, the learned judge considered the question whether the plaintiff's pleadings disclosed an actionable claim for damages against the Town Council. The plaintiff's complaint is that, because of the assumed wrongful exercise of power by the Town Council in approving the plans he has suffered damage. The judge considered that the plaintiff's claim under this head against the Town Council was essentially a claim for special damages, that the plaintiff had not given sufficient particulars, that the Council had not asked for particulars of damage but it was not bound to do so, and that on the pleadings as they stood no reasonable cause of action for damage was disclosed against the Town Council.

Dato' S.P. Seenivasagam, counsel for the plaintiff, criticized the judgment on several grounds.

First, he said that the learned judge was wrong in striking out the pleadings in so far as they related to a claim for special damages. He argued that no objection had been taken by any of the defendants to the want of particulars and the plaintiff thus had no opportunity to amend his statement of claim. Alternatively he submitted that sufficient particulars for special damage had been disclosed in the statement of claim.

As regards paragraph 5 of the amended statement of claim, Dato' Seenivasagam argued that the learned judge ought to have held that the plaintiff had expressly pleaded damage to his property. Should this court agree with the learned judge, Dato' Seenivasagam asked leave to amend paragraph 5 by substituting for it the following:—

"5. In or about the month of May, 1965, the first defendant commenced building operations on the lot 6233 in accordance with the said building plans without proper safeguard or precaution for the protection of the plaintiff's adjoining property as required by law and by by-law No. 46 of the Town Board By-laws, 1937, and in consequence thereof the first defendant, his servants or agents caused damage to the plaintiff's property, namely, his house on land comprised in Certificate of Title No. 3978 for Lot 6232.

PARTICULARS OF DAMAGE

1. Expanded metal fence broken and twisted.

2. Roof, tiles, roof-gutters and window panes broken and damaged.

5A. In addition the defendant No. 1, his servants or agents negligently by reason of failing to take adequate precautions, caused cement plasters, broken bricks, granite stones and pieces of timber to fall on the plaintiff's land and house in the course of the erection of the said three 4-storey buildings, as a result whereof the first defendant is liable in trespass and damage in that the plaintiff had to repair, colour-wash and paint his house as the said materials caused damage and also dirt to be splashed all over the house."

Dato' Seenivasagam argued that, as the merits of this case had not been gone into, it is not too late for us to allow the amendment.

With regard to the proposed amendment, it is to be noted that the word "trespass" is

explicitly introduced for the first time into the pleadings, and Mr. Williams, counsel for the neighbour, complained before us that the original claim was only in respect of breach of an alleged statutory duty and, if the amendment is permitted at this late stage, the cause of action would change completely.

Next, Dato' Seenivasagam argued that the learned judge was wrong in law in holding that the Johore Bahru Town Council could not be sued for conducting its business or committing acts or authorising acts to be done contrary to law.

Finally, he argued that the learned judge was wrong in law in holding in effect that the plaintiff had no *locus standi* and no cause of action to sue the defendants.

It is now convenient to deal with the law. First, I shall set out the relevant provisions of the Johore Town Boards Enactment and the By-laws made under it.

Sections 136, 137 and 138 of the Town Boards Enactment read as follows:—

"Contents of general town plan.

136. (i) A general town plan (hereinafter referred to as a draft plan) may shew or make provision therein for

(a) streets, railways and other main communications;

(b) zones or districts set apart for use for any type or category that may be stated on such draft plan of residential, commercial, industrial, agricultural or other use and zones or districts (being either the same as or distinct from any of those hereinbefore described) in any one of which the number of houses in any acre shall not exceed the number indicated by the draft plan as the number of houses per acre permitted for that particular zone or district;

(c) reserves for Government purposes;

(d) parks, recreation grounds and similar open spaces;

(e) building lines; and

(f) regular lines of streets which have been declared under Part VII.

(ii) The draft plan may consist of one or more plans drawn to such scale and reproduced in such manner as the board may determine.

Exhibition of draft.

137. A draft plan when prepared shall be open to public inspection for a period of three months. During such period the board shall advertise once a week in a local newspaper, and shall notify in each issue in the *Gazette* the place and hours at which such plan may be inspected.

Consideration of objections.

138. (i) Any person affected by the draft plan may, within the said period of three months, send to the president a written statement of his objections to anything appearing in the draft plan.

(ii) Such written statement shall set out

(a) the nature of and reasons for the objection;

(b) if the objection would be removed by an alteration of the draft plan, any alteration proposed.

(iii) Any such written statement shall be considered at a meeting of the board, of which the objector shall be advised; and the objector may attend and be heard, in person or by advocate or by duly authorized agent or officer.

(iv) The board may reject any objection in whole or in part or frame amendments of the draft plan to meet such objection. Notice of any amendment shall be served upon the registered proprietor of any land affected thereby.

(v) Any written objection to an amendment received within fourteen days after service of such notice upon the objector shall be considered at a meeting of the board, of which such objector and the objector, if any, upon whose objection such amendment was made shall be advised, and all the objectors may attend and be heard, in person or by advocate or by a duly authorized agent or officer."

What happens after objections to a draft plan have been considered by the Council? The answer is given in the words of section 139 as follows:—

"Submission of draft plan to Sultan in Council.

139. After consideration of objections the board shall submit the draft plan with or without amendments to His Highness the Sultan in Council for his approval. They shall submit therewith —

(a) a schedule of the objections, if any, made under section 138 and not withdrawn;

(b) a schedule of the amendments, if any, framed by the board with a view to meeting such objections."

Then follows section 140 the relevant portion of which reads:—

"Powers of Sultan in Council.

140. (i) Upon submission of a draft plan His Highness the Sultan in Council may —

(a) approve it;

(b) refuse to approve it;

(c) refer it to the board for further consideration and amendment.

(iii) A draft plan approved as aforesaid is hereinafter referred to as 'an approved plan'.

(v) On such approval being given, the approved plan shall be printed, and a copy shall be permanently exhibited for public inspection at the office of the board, and the fact of such approval and execution shall be notified in the *Gazette*.

(vi) The board shall supply a copy of the approved plan to any person on payment of such fee as the board may determine."

Section 145 is the all-important one in this case. That section reads:—

"Effect of approved plan.

145 (i) The board shall refuse to approve the plan of any new building . . . . unless such plan is in conformity with the approved plan.

(ii) . . . . . "

It is clear that this section imposes on the board a statutory duty and that the board would be in breach of this duty if it approved a building plan not in conformity with an approved plan. Referring to the corresponding provision of the F.M.S. Town Boards Enactment (Cap. 137) in

Ipoh Town Council & Anor. v. *Ng Khoon Khoon*,[3] Thomson C.J. (as he then was) said at page 230:—

". . . . by section 145 the Council must, where an approved plan exists, refuse to approve plans for any buildings which are not in conformity with the approved plan irrespective of whether or not the proposed building is in contravention of any by-law and irrespective of any views they may have as to the merits of an individual building."

I now reproduce the by-laws relied on by the plaintiff.

By-laws 35, 30, 10(i)(g) and 46 read as follows:—

"Detached house boundaries.

35. For a detached dwelling house or a pair of semi-detached dwelling houses there shall be at least 10 feet clear between the building and the boundary of any adjoining lands or premises."

"Height.

30. (i) No building which abuts on a street shall exceed in height the width of the street on which it abuts; provided that where a building abuts on two or more streets the height thereof may equal the width of the widest of such streets. For the purposes of this by-law the height of a building shall be measured from the mean level of the street adjacent to the building to the top of the parapet or the half height of the roof whichever is the higher. For the purpose of the foregoing definitions account shall be taken of parapets but not of chimneys, ornamental towers, turrets or other architectural structures.

(ii) Except for chimneys, dormers, lantern lights or ornamental features amounting in all to not more than one-third of the rear elevation, no part of any building to the back premises whereof there is access by means of a lane and no structural alteration of any such building already erected, shall extend beyond an imaginary plane included towards the building at an angle of 63½ degrees from the horizontal and starting from the centre line of such lane as aforesaid in rear of such building; provided that the board may allow an extension of building beyond the said imaginary line where in the opinion of the board such restriction is detrimental to planning or architectural effect.

(iii) The board shall retain the power to allow a building exceeding in height the width of the street in special cases but where this permission is given the method of construction should be in accordance with the regulations operating for the time being in the London County Council."

"Plans required.

10. (i) All plans must show, if required by the president of the board:—

x x x x x

(g) security against fire, and, in the case of places of public resort or entertainment, including places for religious worship, the means of egress in case of fire or accident;

x x x x x."

"Precautions whilst building.

46. Proper precautions shall be taken for the protection of the public whilst building operations are being carried on by the placing of a strong hoarding round the building when necessary, with lamps at those corners which abut on a street lighted and kept burning from sunset to sunrise. All building material shall be kept within such hoarding unless permission shall have been obtained from the board under section 72 of the Enactment for the deposit of building materials."

Having set out the relevant provisions of the Town Boards Enactment and by-laws, I now set out the common law principles governing civil liability for breach of statutory duty.

In *Pasmore & Ors.* v. *The Oswaldtwistle Urban District Council* [4] it was held that the duty of a local authority, under section 15 of the Public Health Act 1875, to make such sewers as may be necessary for effectually draining their district for the purposes of that Act, cannot be enforced (by an action for *mandamus*) brought by a private person, and his only remedy for neglect of the duty is that given by section 229 of the Act, a complaint to the Local Government Board. The Earl of Halsbury L.C. thus stated the principle at page 394:—

"The principle that where a specific remedy is given by a statute, it thereby deprives the person who insists upon a remedy of any other form of remedy than that given by the statute, is one which is very familiar and which runs through the law. I think Lord Tenterden accurately states that principle in the case of *Doe* v. *Bridges*.[5] He says: 'Where an Act creates an obligation and enforces the performance in a specified manner, we take it to be a general rule that performance cannot be enforced in any other manner.'"

In *Butler & Anor.* v. *Fife Coal Company Ltd.*[6] it was held that breach by the defendants of the special rules applicable to their mine under section 41 of the Coal Mines Regulation Act, 1887 (which required them to appoint and keep in charge persons competent to deal with dangers arising in the mine) entitled the plaintiffs to damages at common law. Lord Kinnear thus stated the principle at page 165:—

"If the [statutory] duty be established, I do not think that there is any serious question as to the civil liability. There is no reasonable ground for maintaining that a proceeding by way of penalty is the only remedy allowed by the statute . . . . We are to consider the scope and purpose of the statute and in particular for whose benefit it is intended . . . . When a duty of this kind is imposed for the benefit of particular persons, there arises at common law a correlative right in those persons who may be injured by its contravention."

In *Cutler* v. *Wandsworth Stadium Ltd.*[7] it was held that no action lies at the suit of an individual bookmaker against the occupier of a licensed dog-racing track on which a totalisator is lawfully in operation for failure to provide him with "space on the track where he can conveniently carry on bookmaking," in accordance with section 11, sub-section 2(b) of the Betting and Lotteries Act, 1934. The obligation imposed by that section is enforceable only by criminal proceedings for the penalties specified in section 30, sub-section 1, of the Act.

Lord Simonds thus stated the principle at page 407:—

"It is, I think, true that it is often a difficult question whether, where a statutory obligation is placed on A., B. who conceives himself to be damnified by A.'s breach of it has a right of action against him. . . . I do not propose to try to formulate any rules by reference to which such a question can infallibly be answered. The only rule which in all circumstances is valid is that the answer must depend on a consideration of the whole Act and the circumstances, including the pre-existing law, in which it was enacted. But that there are indications which point with more or less force to the one answer or the other is clear from authorities which, even where they do not bind, will have great weight with the House. For instance, if a statutory duty is prescribed but no remedy by way of penalty or otherwise for its breach is imposed, it can be assumed that a right of civil action accrues to the person who is damnified by the breach. For, if it were not so, the statute would be but a pious aspiration. . . . . [But it] may be that, though a specific remedy is provided by the Act, yet the person injured has a personal right of action in addition."

In a more recent case, *Solomons* v. *R. Gertzenstein Ld. & Ors.*[8] the court had to consider the effect of a breach of a statutory duty imposed on owners under the London Building Acts (Amendment) Act, 1939. Section 133(2) thereof provides that "all means of escape in case of fire . . . . provided in pursuance of . . . . this Act or otherwise shall be kept and maintained in good condition and repair and in efficient working order by the owner of the building", and section 148 provides that contravention of section 133 is an offence for which a penalty is provided. At about 7 p.m. on 10th November, 1950, a fire started in a house in Soho. Owing to failure by the defendants to maintain in good condition and repair all means of escape in case of fire, the plaintiff received injuries while escaping through a window. He brought an action for damages for personal injuries against the landlords as owners, alleging breach of section 133. Lord Goddard C.J. holding that the landlords were liable, said at page 577:—

". . . . I can see no reason, therefore, why a person injured because the means of escape were not maintained in proper working order should not have a cause of action. The principle which I would endeavour to state is that, where a duty imposed by the Act is intended for the benefit of the public generally, a right of action is not given to an individual who may suffer an injury from his breach, but where the duty is imposed for the benefit of a particular ascertainable class, such as workers in a building, anyone injured as a result of the breach has a right of action. It does not seem to me that it necessarily follows that if the London County Council required certain precautions to be taken in such places of public resort as theatres or a stadium or large exhibition hall, that if a fire took place and persons were injured every one of them would have a cause of action. It is not necessary to decide this, but it seems to me there may be a considerable difference between the public who resort or are invited to resort to such places and workers in a building in which precautions are ordered to be taken for the benefit of those workers. . . ."

The plaintiff had also sued a receiver as an "owner". Lord Goddard C.J. held that the receiver was an owner and therefore liable. The receiver appealed and won his appeal in the Court of Appeal, on the ground that he was not an "owner", see decision reported in *Solomons* v. *R. Gertzenstein Ld. & Ors.*[9] Notwithstanding this, the Court of Appeal agreed with the principle enunciated by Lord Goddard.

Romer L.J. said at page 264:—

"Nevertheless, I cannot but think that the principal purpose of measures such as are found in section 133 is the protection of individuals rather than the promotion of the interests of the masses. It is a matter of general sorrow to hear of persons who have been trapped in a burning house without any means of escape; but it is death to the victims themselves. I emphasize this point because it appears to me to be of cardinal importance, in considering whether a civil suit lies for breach of a statutory duty, to see whether, on a broad view, that duty has been imposed for the general welfare on the one hand or in the interests of individuals or of a defined or definable class of the public on the other."

The position is summed up by *Halsbury's* Laws of England, 3rd Edition, Volume 36, in paragraph 688 as follows:—

"An individual can sue for a breach of statutory duty only if the statute imposes a duty enforceable by a party aggrieved as well as a public duty. The answer to the question whether the statute imposes a duty so enforceable does not necessarily depend upon whether the statute was intended to protect a limited class of persons or the public as a whole. Nevertheless it is of importance to determine what was the intention of the statute in this respect, because, if the statute on its true construction is intended to protect a particular class, it is some indication that members of that class are intended to have a right of action . . . . On the other hand, if the statute is intended to protect the public as a whole, it will not usually be construed as giving a right of action to individual members of a particular class. In any case in which a class of individuals has a common law right of action in respect of the breach of a duty imposed by a statute, a plaintiff to succeed must shew that he is within the class of persons which is intended to be protected and to which the duty is therefore owed."

I now turn to two cases involving the English Town Planning Acts illustrating the operation of the above principle. First, there is *Buxton* v. *Minister of Housing and Local Government*[10] in which Salmon J. held that persons affected by the Minister's order regarding certain developments could not succeed in having the order quashed. He said at page 411:—

"Before the town and country planning legislation any landowner was free to develop his land as he liked provided he did not infringe the common law. No adjoining owner had any right which he could enforce in the courts in respect of such development unless he could shew that it constituted a nuisance or trespass or the like. The scheme of the town and country planning legislation, in my judgment, is to restrict development for the benefit of the public at large and not to confer new rights on any individual members of the public, whether they live close to or far from the proposed development."

That decision was followed by Paull J. in *Gregory* v. *London Borough of Camden.*[11] In

this case the plaintiffs were the owners and occupiers of two houses at the back of which was a large open space forming part of the grounds of a convent. The defendants, the local planning authority, granted planning permission to the trustees of the convent to erect a large new school in the convent grounds and, later, for a second means of access to it which would probably affect the amenities of the plaintiffs' houses, as many hundreds of pupils might well use this access and pass close to them. The plaintiffs brought an action for a declaration that the grants of planning permission were *ultra vires* the defendants. Assuming that the grants were *ultra vires*, it was held that the plaintiffs had no right to ask for the declaration, because there was no infringement of any of their legal rights. Paull J. said at page 202:—

"There are certain statutes which were passed to protect a certain class of people; and if a statute is passed to protect a class of persons, then any one in that class who is affected by a breach of the statute may bring an action for damages in respect thereof. The Town Planning Acts, however, have been passed to give rights to the public only and not to any particular class of the public."

In this country we have the case of *District Council Central, Province Wellesley* v. *Yegappan* [12] where an adjoining owner, in the words of Thomson L.P. at page 178, "is anxious to prevent . . . . developers making use of their land [adjoining his] in a way he does not like or, if he cannot do so, to obtain some sort of compensation from them". To do this, he attempted to exploit what he alleged to be minor breaches of the building by-laws in the plans which the developers had prepared and the Council passed. The learned Lord President said at page 177:—

". . . . the most [the adjoining owner] has been able to allege , . . . is that in one or two respects the buildings covered by the plans will contravene the by-laws when they are erected. If this happens and if the result affects his interests to such an extent as to constitute, for example, a nuisance, he will have his action and the approval of the building plans by the local authority will afford the developers no protection."

As regards the plaintiff's remedy against the council in respect of these breaches of the by-laws, the learned Lord President said at page 177:—

"He certainly has none against the local authority."

The law that may be extracted from the above is, in my opinion, as follows:—

(a) The prohibition by section 145 is, as has already been noted, clearly a statutory duty imposed on the council and the council is liable in damages for breach of that duty if it is thought that the duty is for the benefit not of the public generally but of individuals or of a particular or definable class of the public, provided that the Enactment provides no remedy, civil or criminal, for such breach. This duty is not, however, a duty imposed on persons other than the council such as the neighbour in the instant case.

(b) The same principle applies as regards the duty, if any, imposed under the relevant by-laws.

In my judgment the duty imposed on the Johore Bahru Town Council by section 145 is owed not only to the public generally but to a broad class — a particular definable class of the public of which the plaintiff is one. When the council zones an area for residential purposes, the zone benefits not only the inhabitants of the town generally, it benefits in particular the inhabitants of the zone. Persons buying land in the zone are prepared to pay an increased price because of the promise of peace and quiet and the attractions of living in a residential zone.

There is no remedy, civil or criminal, provided by the Enactment for any breach of section 145, nor does the Enactment even say that a complaint may be made to the State Authority. Therefore, if any breach by the council of its duty under section 145 (either through oversight, ineptitude, indifference to the law or worse) results in damage to the owner of any adjoining land in a residential zone such as the plaintiff, he has, in my judgment, a civil remedy for damages against the council. It will be recalled that in *Solomons' case* [9] Lord Goddard C.J., while holding that any breach by an owner of a statutory duty imposed under the London Building Acts (Amendment) Act, 1939, exposed him to an action for damages, yet was of the opinion that it did not necessarily follow that, if the London County Council required certain precautions to be taken in places of public resort such as theatres, and a fire took place and persons were injured, every one of them would have a cause of action. Similarly, in the instant case I am of the opinion that it does not necessarily follow that the Johore Bahru Town Council is liable for any damage caused by breach of its duty under section 145, to all the inhabitants of the town.

In my opinion, the scheme of the Johore Town Boards Enactment is quite different from that of the current English town and country planning legislation; it is not state-wide in scope, it is restricted to specific towns in the State and section 145 is effective only as regards town areas which have been zoned, while the English legislation blankets the entire country and hence the decision in *Buxton* [10] and *Gregory*.[11]

Accordingly I would allow the appeal against the Town Council in so far as section 145 is concerned.

Holding the council liable for damages for any injury caused to the owner of an adjoining lot for breach of its statutory duty under section 145, is not necessarily unjust to the council. Any plan approved under section 140 for zoning an area for residential purposes, does not tie the council's hands for ever. If, owing to change of circumstances, it is desired to allow a non-residential building to be built in a residential area, it would be open to the council to propose under section 144 an amendment to the approved plan. In that event the council will give notice of its intended amendment, invite and consider objections and persons in the position of the plaintiff will then have an opportunity to object to the proposed amendment. Only after objections have been considered may His Highness the Sultan in Council approve the proposed amendment. These provisions also demonstrate, in my view, that the zoning provisions in the Enactment are for the special benefit of persons living or owning lands in zoned areas.

As to by-laws my views are as follows: by-law 35 imposes a duty, by-law 30(1) may be departed from by the council under by-law 30 (3), by-law 10 must be complied with only if so required by the president of the council and by-law 46 imposes a duty not on the council but on the builder concerned. There is, however, no provision cited to us corresponding to section 145 which makes it incumbent on the council to comply with the duty, if any, imposed by any of these by-laws. In so far as there is any duty to comply with them, it is imposed by sections 92(i) and 93(iii) of the Enactment on the owner in the first instance and if he neglects this duty he is subject to criminal sanctions, as is the builder who contravenes by-law 46 (see section 18 for the penalty). But this does not necessarily exempt the infringer from civil liability should he cause damage or injury through negligence or trespass; indeed in principle nothing should exonerate him even if he studiously complies with these by-laws and yet damages his neighbour through his negligence or by his trespass.

As regards the assumed breach of by-laws, I hold, following the dictum in *Yegappan's case* [12] that the plaintiff has no remedy against the council, it not being alleged that the council has caused damages by negligence or trespass.

As regards the neighbour's liability, it is not alleged that it was liable for the wrongful approval of the building plan by the Town Council. It is alleged simply that it failed to take proper precautions as required by by-law 46 for the protection of the public while building operations were being carried on, and in consequence of the breach of that by-law and/or the negligence of the neighbour, its servants or agents, the plaintiff suffered risk of bodily injury to his children and damage to his property, and that cement plasters, etc., have fallen on to the plaintiff's land in the course of the building operations. This is an allegation that, because of the breach of by-law 46 and/or because of the negligence of and trespass by the neighbour, its servants or agents, the plaintiff suffered —

(a) risk of bodily injury to his children and

(b) damage to his property.

These are two distinct allegations. It is true that the allegation regarding (a) relates to injury *in futuro;* in my opinion this does not entitle the plaintiff to bring now before the happening of the injury an action against the neighbour.

But the allegation regarding (b) is an allegation of a definite damage that has happened to the plaintiff's property caused either by the breach by the neighbour of by-law 46, and/or his negligence and trespass. This allegation, if true, may following the dictum in *Yegappan's case* [12] found a claim for damage. But it is true, as found by the learned judge, that these allegations are allegations of special damage and that this damage had not been given with sufficient particularity. However, in view of my decision as regards the liability of the Town Council and in view of my decision as regards the other aspects of the plaintiff's claim against the neighbour, I am of the opinion that the justice of the case requires that the decision of the learned judge as regards the plaintiff's claim against the neighbour should also be reversed.

I say nothing whether or not this court should allow the plaintiff's application made before us to amend paragraph 5 of his statement of claim, but when the matter returns to the lower court the plaintiff may, if he is so advised, renew the same application before the learned judge.

I would therefore allow this appeal.

I set aside Ali J.'s judgment and remit this case to the lower court for trial of the issues of fact and determination of the suit in the light of the law set out in his judgment. Some of the facts to be investigated are as follows:—

(a) Was the council in breach of section 145 and if so what damage has been caused to the plaintiff by such breach? (There is no need to enquire whether or not the council was also in breach of the by-laws).

(b) Was the neighbour in breach of by-law 46 and if so what damage has been caused to the plaintiff by such breach?

(c) Was the neighbour guilty of the tort of negligence (and/or, if the plaint is amended, trespass) towards the plaintiff and if so what damage has been caused to the plaintiff?

The law propounded may be summarised very briefly as follows:—

(1) The council is liable to the plaintiff if in breach of the outright prohibition of section 145 it passed the neighbour's building plan when it was not in conformity with the approved plan and such breach results in damage to the plaintiff.

(2) The council is not liable to the plaintiff for breach of the by-laws, it not being alleged that the council has caused damage by negligence or trespass.

(3) The neighbour is liable to the plaintiff for breach of by-law 46 if, and only if, the breach results in actual damage to the plaintiff and in any event, irrespective of whether the neighbour was in such breach or not, the neighbour is liable to the plaintiff for any damage caused by negligence and/or trespass.

Azmi L.P and **MacIntyre F.J.** concurred.

Appeal allowed.

Solicitors: *S. Seenivasagam & Sons; Williams & Co.*

THE ATTORNEY-GENERAL, SINGAPORE v. HO TEE MING

[F.C. (Wee Chong Jin C.J., Chua & Winslow JJ.) January 31, 1969]

[Singapore — Federal Court Civil Appeal No. Y.56 of 1967]

Negligence — Safe system of work — Prison authorities requiring inexperienced prisoner to place asbestos roofings — Contributory negligence.

Damages — Hands — Rheumatoid arthritis.

This was an appeal by the Attorney-General against the decision of the High Court awarding damages to the respondent for injuries sustained by him as a result of the negligence of the prison authorities. The respondent was a prisoner at the material time. He was instructed by the instructor of metal works at the prison to climb on top of a framework of a garage which was in the process of being constructed, and place some heavy asbestos sheets on its metallic rafters to serve as a sort of roof. He was inexperienced in this type of work. While he was carrying out the instructions, the respondent happened to step on the asbestos sheet which broke and caused him to fall to the ground from a height of about 8 to 9 feet. He suffered injuries to his hands and face and rheumatoid arthritis set in on both his hands as a result of the accident. The High Court awarded him the sum of $14,000 as general damages and $600 as special damages on the grounds that the prison authorities were negligent in failing to provide a sufficiently reasonable and safe system of work, and that there was no contributory negligence on the part of the respondent.

The question for decision in this appeal was whether the trial judge was right in finding that the prison authorities were negligent in failing to provide a sufficiently reasonable and safe system of work for the work which they required the plaintiff to do on the metallic framework of the roof and that there was no contributory negligence on the part of the plaintiff and finally whether the quantum of damages awarded was excessive.

Held: (1) in the circumstances of the case, the prison authorities had failed to provide the respondent with a sufficiently reasonable and safe system of work for the work which they required him to do;

(2) the respondent had failed to take reasonable care for his own safety and had thereby contributed to his own injury; his share in the responsibility for the accident was one half;

(3) the award of $14,000 as general damages for loss of earnings and pain and suffering and $600 as special damages for loss of earnings before the trial was confirmed.

Cases referred to:—

(1) *Paris* v. *Stepney Borough Council* [1951] 1 All E.R. 49.

(2) *Morris* v. *West Hartlepool Steam Navigation Co. Ltd.* [1956] 1 All E.R. 385.

(3) *Eng Lye Hup Co. Ltd.* v. *Chua Sai Choo & Anor.* [1968] 1 M.L.J. 231.

FEDERAL COURT.

Lee Kim Siang (State Counsel) for the appellant.

Denis Murphy for the respondent.

Cur. Adv. Vult.

Winslow J. (delivering the judgment of the court): This is an appeal by the Attorney-General, Singapore against the decision of Kulasekaram J. who held that the plaintiff/respondent had proved negligence on the part of the prison authorities at the Medium Security Prison, Changi on 15th September, 1965 and awarded him damages for the injuries sustained by him as a consequence of such negligence. The appeal is directed both against the question of liability as well as the quantum of damages awarded in the sum of $14,000 for general damages and $600 for special damages.

The plaintiff was a prisoner nearing the end of his term of imprisonment at the material time and had been instructed by the instructor of metal works at that prison to place some asbestos sheets on the metallic rafters of the framework of a garage which said sheets were intended to serve as the roof of that garage.